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7	UNITED STATES DISTRICT COURT
, 8	EASTERN DISTRICT OF CALIFORNIA
9	CARL LOVELL GILLIAM, 1:09-cv-01383-OWW-DLB (HC)
0	Petitioner, FINDINGS AND RECOMMENDATION
1	v. Petitioner, Petitioner, Prinding SAND RECOMMENDATION REGARDING RESPONDENT'S MOTION TO DISMISS PETITION
2	[Doc. 9]
3	JAMES D. HARTLEY,
4	Respondent.
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6	Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus
17	pursuant to 28 U.S.C. § 2254.
8	BACKGROUND
9	Petitioner filed the instant petition for writ of habeas corpus on August 7, 2009. (Court
20	Doc. 1.) Respondent filed a motion to dismiss the petition on October 28, 2009. (Court Doc. 9.)
	Petitioner filed an opposition on November 12, 2009, and Respondent filed a reply on November
21 22	20, 2009. (Court Docs. 10, 11.)
22	DISCUSSION
23	A. <u>Procedural Grounds for Summary Dismissal</u>
24	Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:
25 26	If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.
27 28	The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of
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1	habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to
2	dismiss, or after an answer to the petition has been filed. See Herbst v. Cook, 260 F.3d 1039 (9th
3	Cir.2001). A petition for habeas corpus should not be dismissed without leave to amend unless it
4	appears that no tenable claim for relief can be pleaded were such leave granted. Jarvis v.
5	<u>Nelson</u> , 440 F.2d 13, 14 (9 th Cir. 1971).
6	B. <u>Failure to State a Cognizable Federal Claim</u>
7	The basic scope of habeas corpus is prescribed by statute. Subsection (c) of Section 2241
8	of Title 28 of the United States Code provides that habeas corpus shall not extend to a prisoner
9	unless he is "in custody in violation of the Constitution." 28 U.S.C. § 2254(a) states:
10	The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in
11	custody pursuant to a judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.
12	(emphasis added). See also, Rule 1 to the Rules Governing Section 2254 Cases in the United
13	States District Court. The Supreme Court has held that "the essence of habeas corpus is an attack
14	by a person in custody upon the legality of that custody" Preiser v. Rodriguez, 411 U.S. 475,
15	484 (1973).
16	Furthermore, in order to succeed in a petition pursuant to 28 U.S.C. § 2254, Petitioner
17	must demonstrate that the adjudication of his claim in state court
18	resulted in a decision that was contrary to, or involved an unreasonable application
19	of, clearly established Federal law, as determined by the Supreme Court of the United States; or resulted in a decision that was based on an unreasonable
20	determination of the facts in light of the evidence presented in the State court proceeding.
21	28 U.S.C. § 2254(d)(1),(2).
22	Respondent argues that Petitioner has failed to state a cognizable federal claim. The
23	Court finds Respondent's argument to be correct, in part. In his Petition, Petitioner complains
24 25	that he received a serious Rules Violation Report for possession of drugs in violation of the
25 26	California Code of Regulations. He asserts that prison officials have not complied with their own
26 27	rules and regulations in rendering its decision. More specifically, Petitioner argues that the
27 28	regulations were violated because the controlled substance was not stored or tested. Petitioner
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1 goes on to state that "[w]ithout confirmation by a licensed pharmacist or a toxicology laboratory, 2 'some evidence' does not apply per Superintend[e]nt v. Hill, 472 U.S. 445 (1985). (Petition, at p.12.)¹ To the extent Petitioner claims a violation of state procedures and regulations, he fails to 3 present a cognizable federal claim. See Estelle v. McGuire, 502 U.S. 62, 67, (1991) ("We have 4 5 stated many times that 'federal habeas corpus relief does not lie for errors of state law.' "), quoting Lewis v. Jeffers, 497 U.S. 764, 780 (1990); Gilmore v. Taylor, 508 U.S. 333, 348-49 (1993) 6 7 (O'Connor, J., concurring) ("mere error of state law, one that does not rise to the level of a 8 constitutional violation, may not be corrected on federal habeas").

9 However, when a prison disciplinary proceeding may result in affecting the length of a 10 prisoner's sentence, such as the loss of good time credits, due process requires that the prisoner receive: (1) advance written notice of at least 24 hours of the disciplinary charges; (2) an 11 12 opportunity, when consistent with institutional safety and correctional goals, to call witnesses and 13 present documentary evidence in his defense; and (3) a written statement by the factfinder of the 14 evidence relied on and the reasons for the disciplinary action. Hill, 472 U.S. at 454; Wolff, 418 15 U.S. at 563-567. In addition, due process requires that the decision be supported by "some 16 evidence." Hill, 472 U.S. at 455, *citing* United States ex rel. Vatauer v. Commissioner of 17 Immigration, 273 U.S. 103, 106 (1927). Thus, the portion of Petitioner's claim that challenges 18 the sufficiency of the evidence to support his rules violation, is cognizable and warrants further 19 review.

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RECOMMENDATION

Accordingly, the Court HEREBY RECOMMENDS that Respondent's motion to dismiss the petition be GRANTED in part and DENIED in part for the reasons explained above.

This Findings and Recommendation is submitted to the Honorable Oliver W. Wanger, United States District Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 72-304 of the Local Rules of Practice for the United States District Court, Eastern District of California.

^{28 &}lt;sup>1</sup> For ease of reference, the Court refers to the page numbers as reflected in the Court's Case Management Electronic Filing System.

1	Within thirty (30) days after being served with a copy, any party may file written
2	objections with the court and serve a copy on all parties. Such a document should be captioned
3	"Objections to Magistrate Judge's Findings and Recommendation." Replies to the objections
4	shall be served and filed within ten (10) court days (plus three days if served by mail) after service
5	of the objections. The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C.
6	§ 636 (b)(1)(C). The parties are advised that failure to file objections within the specified time
7	may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
8	1991).
9	IT IS SO ORDERED.
10	Dated:December 1, 2009/s/ Dennis L. BeckUNITED STATES MAGISTRATE JUDGE
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